

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EARNEST S. HARRIS,

Petitioner,

No. CIV S-04-1906 FCD KJM P

vs.

BILL LOCKYER,

Respondent.

ORDER

Petitioner is a prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On April 13, 2005, this court ordered that petitioner's motion to vacate his sentence because of respondent's failure to comply with court deadlines be disregarded because petitioner had not served respondent's counsel.

On April 25, 2005, petitioner renewed his motion, which has been served on counsel. He argues that respondent did not timely file his answer and has not served him with copies of the documents lodged with the court in support of the answer.

Respondent filed his answer on March 25, 2005, within the time granted to him in this court's order of March 17, 2005. Moreover, even a total failure to respond would not entitle petitioner to habeas relief. See Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1990).

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1 Petitioner's second basis for the motion is that respondent has failed to serve him
2 with the state court records lodged in connection with the answer. These documents are all part
3 of the state court proceedings that petitioner litigated in pro per and thus copies should be in his
4 possession. Indeed, he has attached the Superior Court ruling on his state petition as Exhibit A in
5 support of his federal habeas petition. There is no requirement in the local rules that respondent
6 serve petitioner with these records, which should be equally accessible to petitioner.
7 L.R. 81-191 (f).

8 Accordingly, IT IS ORDERED that petitioner's April 25, 2005 motion for
9 reconsideration of his motion to grant his petition for a writ of habeas corpus is denied.
10 DATED: May 2, 2005.

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13 UNITED STATES MAGISTRATE JUDGE
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